

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER ADOPTING NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS	DOCKET NO. INU-03-1
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ORDER REGARDING 90-DAY PROCEEDINGS

(Issued September 15, 2003)

In an open meeting on February 20, 2003, the Federal Communications Commission (FCC) adopted rules concerning the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis. Although the FCC's written order memorializing its decisions (FCC 03-36) was not released until August 21, 2003, key findings were announced in a press release on February 20, 2003. Among other matters, the FCC made a presumptive finding that local circuit switching for business customers served by high-capacity loops will no longer be required to be made available as an unbundled network element (UNE). The treatment was further detailed at ¶¶ 451 through 458 of the FCC's written order. The FCC described this as the "enterprise market" and found that competition in these enterprise markets would not be impaired if the local switching UNE were unavailable. The text of the FCC order was released on

August 21, 2003, and published in the Federal Register on September 2, 2003, to be effective on October 3, 2003.¹

The FCC provided that a state commission would have 90 days from the effective date of its order to rebut the presumption of "no impairment" as it affects enterprise switching in an individual state. After the FCC's meeting, the Utilities Board (Board) opened this docket and sought comments on procedural matters in advance of the release of the text of the FCC's decision. Those interested parties that filed comments all indicated that the Board should not take its own affirmative steps to complete a 90-day analysis of enterprise market switching. The commenters agreed that the Board should initiate a proceeding to address the FCC's presumption only if a CLEC files a petition and evidence indicating Board review is required. The Board agrees with this analysis.

In order for the Board to have adequate time to complete a 90-day proceeding in response to a CLEC petition rebutting the national presumption, the Board will establish an October 6, 2003, deadline for filing any such petitions. Further, any such petition should include evidence, in the form of prefiled testimony and exhibits, supporting the request that the national presumption be overridden.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (Triennial Review Order).

If a petition is filed, the Board will establish a specific procedural schedule to ensure the 90-day requirement can be met.

Additionally, the Board notes that in its comments previously filed in this docket, Qwest Corporation (Qwest) suggested that one possible schedule that could be adopted to complete a 90-day proceeding would start with its filing of an updated Statement of Generally Available Terms and Conditions (SGAT) incorporating the changes resulting from the FCC's presumptive finding, on the effective date of the FCC's written order. The Board directs Qwest to make the filing that it recommended be made by no later than October 6, 2003. This will ensure that the changes have been made and filed with the Board prior to the start of any proceedings related to the FCC's order, if such proceedings are necessary.

IT IS THEREFORE ORDERED:

1. Any petition requesting an opportunity to rebut the national presumption set forth in the FCC's Triennial Review Order must be filed on or before October 6, 2003, and must comply with all requirements established in this order.
2. Qwest Corporation is directed to file a revised SGAT by October 6, 2003, that incorporates changes consistent with the FCC's presumptive

finding of "no impairment" described in its Triennial Review Order by October 6, 2003.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of September, 2003.